

JUL 21 2009

PTOL-413A (06-08)
Approved for use through 07/31/2009. OMB 0851-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE**Applicant Initiated Interview Request Form**Application No.: 10/571,619First Named Applicant: David ADDERTONExaminer: Victor L. MACARTHURArt Unit: 3679Status of Application: Pending**Tentative Participants:**(1) Lawrence A. Maxham

(2) _____

(3) _____

(4) _____

Proposed Date of Interview: 22 July 2009Proposed Time: 1:30 PM (EST) AM/PM**Type of Interview Requested:**(1) ☒ Telephonic(2) ☐ Personal(3) ☐ Video Conference

Exhibit To Be Shown or Demonstrated:

☐ YES☒ NO

If yes, provide brief description: _____

Issues To Be Discussed

Issues (Ref., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Continuation Sheet Attached**Brief Description of Argument to be Presented:**Attached

An interview was conducted on the above-identified application on _____

NOTE: This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).

This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

Applicant/Applicant's Representative Signature

Lawrence A. Maxham

Typed/Printed Name of Applicant or Representative

24,483

Registration Number, if applicable

Examiner/SPE Signature

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including collecting, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

RECEIVED
CENTRAL FAX CENTER

JUL 21 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): David ADDERTON	)	Certificate of Transmission/Mailing
Serial No.: 10/571,619)	
Filed: 13 March 2006	)	I hereby certify that this correspondence
Title: HANDRAIL OR TOP RAIL, POST	)	is being facsimile transmitted to the
AND PANEL AND CONNECTOR	)	USPTO, transmitted via the Office
THEREFOR	)	electronic filing system, or deposited with
Group Art Unit: 3679	)	the United States Postal Service with
Examiner: Victor L. MACARTHUR	)	sufficient postage as first class mail in an
Confirmation No.: 4800	)	envelope addressed to: Commissioner for
Attorney Docket No.: 437-57	)	Patents, P.O. Box 1450, Alexandria, VA
	)	22313-1450, on the date shown below:
)	
	)	<u>07/20/09</u>
	)	Date
	)	Lawrence A. Maxham
	)	Registration No. 24,483
	)	Attorney for Applicant(s)
)	

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

FOR DISCUSSION
PURPOSES ONLY -
NOT FOR ENTRY

AMENDMENT UNDER CFR 37 1.116

Responsive to the Office Letter of 17 February 2009, which was made Final,
Applicant responds herewith.

The **claims** commence on page 2.

Remarks commence on page 7.

RECEIVED
CENTRAL FAX CENTER
JUL 21 2009

AMENDMENTS TO THE CLAIMS

1. (Currently Amended) A rail and supported panel assembly comprising:
- 2 a first rail portion and a second rail portion, each the first rail portion having a
constant cross section and ~~the cross section~~ defining an a first elongate recessed channel
- 4 on in on a first underside of the first rail portion, the second rail portion having a constant
cross section and defining a second elongate recessed channel in a second underside of
- 6 the second rail portion;
- a panel supported at a top edge thereof within the ~~recessed channel of either one~~
- 8 ~~of the first and second rail portions~~ recessed channel;
- a first post for supporting the first and second rail portions, a hollow within the
- 10 first post defined by internal walls; and
- a rail-to-post connection assembly located between the first post and the first and
- 12 second rails, the connection assembly having:
- a pair of partially overlapping arms, a first arm fitting wholly or
- 14 substantially within the first recessed channel of the first rail portion, and a second
arm fitting wholly or substantially within the second recessed channel of the
- 16 second rail portion; ~~and~~
- a primary fastener having a shaft, the shaft passing through a hole within
- 18 an overlapping portion of each of the arms thereby providing a pivot about which
the arms can be adjusted, ~~the shaft extending into the post so as to secure the arms~~
- 20 ~~with respect to the post;~~ adjusted to accommodate a range of first and second rail
portion alignment angles; and

22 ~~wherein the arms are movable with respect to each other about the pivot to~~
accommodate a range of first and second rail portion alignment angles.

an insert shaped to fit partially or wholly within the hollow of the post, the
2 insert comprising an upper portion defining a through hole and a lower portion defining a
threaded hole for receiving a thread on the shaft, the through hole and shaft sized to
4 provide clearance between the through hole and the shaft,

wherein the position of each of the arms is lockable with respect to the insert and
6 the insert is lockable with respect to the internal walls of the post by a single action of
tightening the primary fastener.

2 2. (Previously Presented) An assembly according to claim 1 further
2 comprising secondary fasteners connecting each of the arms to the respective rail portion
to which the arm is fitted.

2 3. (Previously Presented) An assembly according to claim 2 wherein the
2 secondary fasteners are rivets, each rivet penetrating through the arm up to the respective
rail portion to which the arm is fitted.

4-6. (Cancelled)

2 7. (Currently Amended) A rail-to-post connection assembly for connecting a
2 hollow post to a rail or a pair of rails, a hollow within the post defined by internal walls,
the connection assembly having:

4 a pair of partially overlapping arms;
an insert shaped to fit partially or wholly within the hollow of the post;
6 a primary fastener having a shaft, the shaft passing through a hole within an
overlapping portion of each of the arms into the insert thereby providing a pivot about
8 which the arms can be adjusted to accommodate a range of alignment angles for
connection to the rail or rails; and
10 a ~~locking means lock~~ for locking the insert to the post, the ~~locking means lock~~
comprising an upper portion of the insert defining a through hole and a lower portion of
12 the insert defining a threaded hole for receiving a thread on the shaft, the through hole
and shaft sized to provide ~~relative clearance~~; clearance between the through hole and the
14 shaft;
wherein the position of each of the arms is lockable with respect to the insert and
16 the insert is lockable with respect to the internal walls of the post by a single action of
tightening the primary fastener.

8. (Previously Presented) An assembly according to claim 7 wherein the
2 upper and lower portions of the insert join at inclined engaging faces that slide relative to
each other when forced together by tightening of the primary fastener, so as to cause
4 lateral movement of the upper portion of the insert relative to the lower portion and the
insert to grip the internal walls thereby.

9. (Original) An assembly according to claim 8 wherein the primary fastener
2 is a threaded bolt having a head that recesses within the uppermost of the two arm.

10. (Original) An assembly according to claim 9 wherein each of the arms
2 defines at least one fastener hole for receiving a secondary fastener.

11. (Original) An assembly according to claim 10 wherein the holes are
2 shaped to receive a countersunk rivet or screw.

12-13. (Cancelled)

14. (Previously Presented) An assembly according to claim 3 wherein the
2 post is hollow and has internal walls shaped to receive an insert.

15. (Previously Presented) An assembly according to claim 14 further
2 comprising a locking member for locking the connection assembly to the first post, the
locking member comprising the insert, wherein the locking member is actuated by the
4 primary fastener to grip the internal walls.

16. (Previously Presented) An assembly according to claim 14 wherein the
2 insert comprises an upper portion defining a through hole and a lower portion defining a

- threaded hole for receiving a thread on the shaft, the through hole and shaft sized to
- 4 provide relative clearance, wherein the upper and lower portions join at inclined engaging
- faces that slide relative to each other when forced together by tightening of the primary
- 6 fastener, so as to cause the insert to grip the internal walls.

17. (Previously Presented) An assembly according to claim 15 wherein the
- 2 insert comprises an upper portion defining a through hole and a lower portion defining a
- threaded hole for receiving a thread on the shaft, the through hole and shaft sized to
- 4 provide relative clearance, wherein the upper and lower portions join at inclined engaging
- faces that slide relative to each other when forced together by tightening of the primary
- 6 fastener, so as to cause the insert to grip the internal walls.

18. (New) An assembly according to claim 1 wherein the upper and lower
- 2 portions of the insert join at inclined engaging faces that slide relative to each other when
- forced together by tightening of the primary fastener, so as to cause the insert to grip the
- 4 internal walls.

REMARKS

Applicant wishes to thank Examiner MacArthur for his time and courtesy in the course of an impromptu interview with the undersigned attorney on 20 July 2009 on the specific subject of whether making the 17 February 2009 Official Action Final was proper and justified, in light of his citing a reference not previously known to Applicant.

Applicant hereby formally requests that the 17 February 2009 Final Action be withdrawn and that a new non-final action be issued. The Examiner advanced no justification for making the 17 February 2009 Action final and Applicant has ample reason to challenge finality of that Action. Applicant's amendment did not necessitate a new ground of rejection, as is set out in detail below. Therefore, under MPEP 706.07(a), the final rejection was improper.

The only changes made to claim 1 were to meet the definiteness requirements of 35 U.S.C. 112, 2nd paragraph, which deficiencies were pointed out by Examiner MacArthur in an Action dated 11 September 2008. Specifically, original claim 1 called for:

- 1) a first rail portion ... having a constant cross section, the cross section defining an elongated recessed channel on an underside.
- 2) a second rail portion ... having a constant cross section, the cross section defining an elongated recessed channel on an underside.
- 3) a pair of partially overlapping arms, each arm fitting wholly or substantially within a respective recessed channel.

The only substantive change to claim 1 made by the Amendment filed 10 December 2008 revised the limitation commencing on line 9 to read as follows:

- A3) a pair of partially overlapping arms, a first arm fitting wholly or substantially within the recessed channel of the first rail portion, and a second arm fitting wholly or substantially within the recessed channel of the second rail portion.

Applicant submits that there was no substantive change in the claim limitations, that the "fitting" of the pair of arms was merely clarified, but not in any way changed. "A first arm fitting ... within the recessed channel of the first rail portion" is not a different limitation than "each arm fitting ... within a respective recessed channel." The same is true of the second arm in the recessed channel of the second rail portion.

Thus there is no support for the Examiner's action of citing a wholly new reference and making that action final. Applicant is clearly entitled to have full consideration of the new reference and the opportunity to revise the claims, if necessary, to overcome that reference.

With respect to claim 7, as revised by the 10 December 2008 Amendment, the new limitation added thereto came directly from claim 8, so there was no amendment which would support the Examiner's action of citing a new reference and making it final, without the opportunity for Applicant to meet that reference.

The following proposed response to the 17 February 2009 Office Action is being here made to facilitate prosecution of this application.

Claims 1-11 and 14-17 were previously pending in this application. Claim 1 has been amended for clarity and to include limitations from claims 4-6, and a portion of new claim 18 comprises limitations from original claim 6. Claims 4-6 have been cancelled, without prejudice. With respect to the indefiniteness rejection, Applicant believes that the amended claims respond to each and all of the issues pointed out by the Examiner. Applicant appreciates the careful reading of the claims by the Examiner and his pointing out the indefiniteness issues.

All of the previously pending claims have been rejected under 35 U.S.C. 102(h) as anticipated by Bailey. This reference was not previously cited by the Examiner and Applicant has had no prior opportunity to address this reference.

Specifically with respect to claim 1, as amended, Bailey does not have a locking insert of the type defined in claim 1 as follows:

“an insert shaped to fit partially or wholly within the hollow of the post, the insert comprising an upper portion defining a through hole and a lower portion defining a threaded hole for receiving a thread on the shaft, the through hole and shaft sized to provide clearance between the through hole and the shaft, wherein the position of each of the arms is lockable with respect to the insert and the insert is lockable with respect to the internal walls of the post by a single action of tightening the primary fastener.”

Specific reference to Bailey, column 5, lines 12-15, makes the difference clear;

“Posts 14 and 15 may be connected to coupling 10 by end members 32. End members 32 may be secured to the ends 12, 13 of posts 15, 14 by suitable fasteners or be welded thereto.”

Clearly there is no disclosure or suggestion in Bailey of an insert that meets the limitations of claim 1, as set out above, which came from original claims 4-6.

Independent claim 7 likewise defines over Bailey. This claim calls for:

“an insert shaped to fit partially or wholly within the hollow of the post; a primary fastener having a shaft, the shaft passing through a hole within an overlapping portion of each of the arms into the insert thereby providing a pivot about which the arms can be adjusted to accommodate a range of alignment angles for connection to the rail or rails; and

a lock for locking the insert to the post, the lock comprising an upper portion of the insert defining a through hole and a lower portion of the insert defining a threaded hole for receiving a thread on the shaft, the through hole and shaft sized to provide clearance between the through hole and the shaft;

wherein the position of each of the arms is lockable with respect to the insert and the insert is lockable with respect to the internal walls of the post by a single action of tightening the primary fastener.”

While the language of this claim differs from claim 1, it defines a locking insert “shaped to fit partially or wholly within the hollow of the post” and is lockable therein as defined. The limitation added to claim 7 came from claim 8. As before, Bailey fails to meet the limitations of claim 7.

Claims 2, 3, and 14-18 depend from claim 1 and serve to further limit and define the structure defined by claim 1. Claims 8-11 depend from and further define the structure defined in claim 7. These dependent claims are believed to be allowable for at least the same reasons as are claims 1 and 7.

Should any issues remain unresolved, Examiner MacArthur is invited to telephone the undersigned attorney.

The Maxham Firm
Attorneys At Law
9330 Scranton Road, Suite 350
San Diego, California 92121
Telephone: (858) 587-7659
Facsimile: (858) 587-7659

Respectfully submitted,
David ADDERTON

By: Lawrence A. Maxham
Attorney for Applicant
Registration No. 24,483